

KAMS080008742023



BEFORE THE MOTOR ACCIDENTS CLAIMS TRIBUNAL
AT MYSURU

(IN THE COURT OF ADDITIONAL SMALL CAUSES
AND SENIOR CIVIL JUDGE, AT MYSURU)

PRESENT

Smt. ZARIFA BANU A.R.

B.A.L., LL.M.

JUDGE, ADDITIONAL COURT OF SMALL CAUSES
AS A PRESIDING OFFICER,
MOTOR ACCIDENTS CLAIMS TRIBUNAL, MYSURU.

DATED THIS THE 20th DAY OF AUGUST 2024

MVC/555/2023

Charanya.A. ... **Petitioner**
Since minor Rptd: by
her father Avinash.H.R.

-Versus-

Mahesha.G.K. and another ... **Respondents**

I.A.

M/S Future General : **Applicant/Respondent**
India Insurance Company : **No.2**
Ltd.,

-Versus-

Charanya.A. : **Opponent/Petitioner**
Since minor Rptd: by
her father Avinash.H.R.

ORDERS ON I A

The learned counsel for the respondent No.2 filed this I.A under Order 7 Rule 11 (d) r/w Sec.151 of CPC r/w Sec.166(3) of MV Act for Rejection of petition for the reason mentioned in the memorandum of facts.

2. In the accompanying memorandum of facts the counsel for respondent No.2 has submitted that, the alleged accident occurred on 10.08.2022. The petition came to be filed on 20.03.2023. Hence, there is an inordinate delay of 37 days in filing the claim

petition. As per amended provision of MV Act the petitioner has to file petition within six months from the date of accident. As such, the petition is barred by law of limitation. Hence, prays to reject the petition.

3. On the other hand, learned counsel for the minor petitioner filed his objection and contended that, the minor petitioner has filed this petition against the respondents claiming compensation for the injuries sustained by her in the road traffic accident. The minor petitioner was under treatment for the accidental injuries and the parents of the minor petitioner were in shock and they were unable to contact their counsel to give information to the petition within the stipulated time. The application filed by the respondent No.2 is not maintainable. The respondent No.2 filed this application

only to drag on the proceedings. Hence prays to dismiss the application.

4. Heard arguments of both side and perused material on record.

5. The points for consideration arises as follows:

1. Whether the respondent No.2 made out ground to reject the petition U/o 7 rule 11 (d) r/w Sec.151 of CPC r/w Sec.166(3) of MV Act?
2. What order?

6. The answer to the above said points are as follows:

Point No.1 : In the Negative.

Point No.2 : As per the final order
for the following:

REASONS

7. **Point No.1:** The minor petitioner has filed this petition against the respondents seeking compensation for the accidental injuries sustained by her in the road traffic accident. It is the contention of respondent No.2 that the alleged accident occurred on 10.08.2022. The petition came to be filed on 20.03.2023. Hence, there is an inordinate delay of 37 days in filing the claim petition. As per amended provision of MV Act the petitioner has to file petition within six months from the date of accident. As such, the petition is barred by law of limitation. On the other hand, the minor petitioner contended that, The minor petitioner was under treatment for the accidental injuries and the parents of the minor petitioner were in shock and they were unable to contact their counsel to give information to the petition within the

stipulated time. The respondent No.2 filed this application to drag on the proceedings.

8. Admittedly, as per Sec.166(3) of MV Act the petition has to be filed within six months from the date of the accident. However, as it is well settled principle of law that the petition can be rejected based on the averments of the petition, not on the defense taken by the respondent in its objection statement. More over the question of law of limitation is a question of mixed law and fact, and it can be decided with full fledged trial of both the parties. The test is as to whether the averments made in the petition are taken to be correct or not is a matter of trial. Thus on account of presumed defense taken by the respondent No.2, petition cannot be rejected. In this regard the Hon'ble supreme court in **Om Prakash Batis V/s Ranjith reported in 2008 ACJ 1700 (SC)** it was held that, "*the claim application filed*

under the Motor Vehicle Act is summary in nature and the provisions of the civil procedure code or Evidence Act are not strictly applicable to such proceedings, the tribunal must take care to see that the innocent victims should not suffer and the tribunal should not succumb to the niceties”.

9. In view of the law laid down in the aforesaid judgment, the tribunal should not have go in to the technicalities if found in the petition. Hence with these observation this tribunal of the considered view that the respondent No.2 has not made out ground to reject the petition. **Hence, Point No.1 answered in the Negative.**

10. **Point No.2:** In view of above said discussion in Point No.1, this tribunal proceeds to pass the following:

O R D E R

IA filed by the
respondent No.2 under Order
7 Rule 11 (d) r/w Sec.151
of CPC r/w Sec.166(3) of MV
Act is hereby dismissed
with cost of Rs.1000/-.

*(Dictated to the Stenographer directly on
computer, typed by her, revised, corrected and then
pronounced by me in the open Court, on this the 20th
day of August, 2024)*

(ZARIFA BANU A.R.)
Judge, Addl. Court of
Small Causes & MACT,
MYSURU.